

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

MARIA DALBOTTEN,

Plaintiff,

vs.

C.R. BARD, INC. and BARD
PERIPHERAL VASCULAR, INC.,

Defendants.

CV 20-34-BLG-SPW

ORDER

The parties have submitted a number of deposition excerpts in advance of trial. This order sets forth the Court's ruling on a portion of these objections in those excerpts. Additional orders ruling on the remaining objections will follow.

A. Kirshna Kandarpa Deposition – July 19, 2018

1. 26:22-26:25 – overruled
2. 27:05-27:19 – overruled
3. 28:20-29:14 – overruled
4. 33:07-33:10 – overruled
5. 33:12-33:16 – overruled
6. 47:14-47:19 – sustained – no context, confusing
7. 53:09-54:06 – overruled
8. 60:18-61:05 – overruled

9. 66:12-66:18 – overruled
10. 91:17-91:22 – overruled
11. 93:12-93:22 – overruled
12. 94:19-94:21 – overruled
13. 96:20-96:22 – overruled
14. 96:24-97:06 – overruled
15. 100:02-100:06 – overruled
16. 106:14-106:16 – overruled
17. 106:19-106:21 – overruled
18. 107:02-107:19 – overruled
19. 108:10-108:12 – overruled
20. 109:24-119:21- objections as to Exhibit 11 are sustained, Rule 602, just
reading the document
21. 120:12-126:20 – sustained, lack of foundation, Rule 602
22. 133:23-134:09 – overruled
23. 134:11-134:18 – overruled, except 134:17 starting with “I was told . . .”,
sustained, hearsay
24. 136:04-136:11 – overruled
25. 136:13-136:18 – overruled
26. 137:09-137:15 – overruled

27. 137:17-137:23 – overruled
28. 138:01 – overruled
29. 138:04-138:09 – overruled
30. 146:01-146:17 – overruled
31. 149:02-149:08 – sustained, vague, could refer to other cases
32. 149:19-150:02 – overruled
33. 150:06-152:01 – overruled as to 150:06-151:11; sustained as to 151:12-152:02 – Order, Doc. 292
34. 152:08-152:14 – sustained, Doc. 292
35. 165:08-165:15 – sustained, Rule 602
36. 166:04-166:11 – sustained – counsel seems to want it both ways – either Kandarpa can testify to the Everest Report (Ex. 11) or he can't (Rule 602). The Court has determined Kandarpa was not involved in the preparation of the Everest Report, and, therefore, has no personal knowledge of the contents of the report. As far as the objections to Kandarpa testifying to the Everest Report, the Court is attempting to be consistent in its rulings but may not be successful. With this understanding of the Court's ruling re: Kandarpa and the Everest Report, counsel shall edit the deposition accordingly.
37. 167:14-167:18 – see above

38. 168:20-169:12 – overruled as to 168:20-169:1; sustained as to 169:2-169:12, non-responsive
39. 169:19-169:22 – overruled
40. 172:02-172:06 – overruled
41. 175:13-175:20 – sustained for reason stated in the objection
42. 176:14-176:19 – overruled
43. 181:06-181:14 – overruled
44. 181:18-181:20 – overruled
45. 182:17-182:17 – overruled
46. 182:22-183:09 – overruled
47. 183:12-183:14 – overruled
48. 183:16 – overruled
49. 183:18-184:17 – sustained, non-responsive
50. 186:06-185:10 – overruled
51. 187:01 – sustained for reasons stated in the objection
52. 187:07-187:19 – overruled as to 187:07-187:13; sustained as to 187:14-187:19 for reasons stated in the objection
53. 188:24-189:20 – sustained as to 189:17-190:07, post implant evidence
54. 190:18-191:02 – sustained – Defendants argue that the evidence is relevant because the design of the G2 never changed, and thus the G2

filter's performance in the Everest Report is relevant to the date of implant. Does any witness testify to the fact the design has never changed?

55. 193:16-194:04 – overruled

56. 194:04-194:05 – sustained, witness doesn't determine relevance

57. 196:10-197:22 – sustained for reasons stated in the objection

58. 199:02-199:18 – overruled

59. 199:21-200:04 – overruled

60. 200:12-201:04 – overruled

61. 201:07-201:10 – sustained – leading on redirect

62. 201:12 – sustained – answer to leading question

63. 201:14-201:20 – sustained for reasons stated in the objection

64. 205:20-205:24 – sustained- see below

65. 206:06-207:08 – sustained – relevancy

66. 208:02-208:24 – overruled as to 208:02-208:21; sustained as to 208:22-208:24 – leading

67. 209:03-210:14 – overruled

68. 210:19-211:07 – overruled

69. 211:22-212:18 – overruled

70. 213:01-214:07 – overruled

- 71. 216:17-216:20 – sustained – no personal knowledge
- 72. 217:12-217:18 – sustained – leading cumulative
- 73. 217:20-218:03 – sustained – leading, cumulative
- 74. 219:10-219:11 – sustained, leading
- 75. 219:13-219:14 – sustained, leading
- 76. 219:16-220:02 – sustained for reasons stated in the objection
- 77. 220:03-220:21 – sustained for reasons stated in the objection
- 78. 220:22-221:08 – sustained for reasons stated in the objection, no personal knowledge, question is not evidence
- 79. 221:23-221:24 – sustained, Rule 602
- 80. 222:05-223:06 – sustained, Rule 602
- 81. 225:07-225:16 – sustained, Rule 602
- 82. 226:01-226:19 – sustained, Rule 602
- 83. 226:22-227:03 – sustained, no personal knowledge, counsel is testifying
- 84. 227:05-227:07 – sustained, relevancy
- 85. 227:09-227:12 – sustained, also asked and answered
- 86. 229:13-229:16 – sustained for reasons stated in objection
- 87. 229:18-230:01 – sustained for reasons stated in objection
- 88. 230:13-230:15 – sustained, leading on redirect
- 89. 231:03-231:10 – sustained, leading on redirect

B. Jack Sullivan Deposition – September 16, 2016

1. 61:06-61:08 – sustained for reasons stated in the objection
2. 61:11-61:19 – sustained for reasons stated in the objection
3. 62:04-62:18 – sustained for reasons stated in the objection
4. 62:19-63:01 – overruled
5. 65:17-65:22 – sustained – non-responsive
6. 68:13-69:01 – sustained for reasons stated in the objection
7. 69:09-69:10 – sustained for reasons stated in the objection
8. 69:12-69:22 – sustained for reasons stated in the objection
9. 70:21-71:10 – sustained for reasons stated in the objection
10. 71:12-71:15 – sustained for reasons stated in the objection
11. 71:17 – sustained for reasons stated in the objection
12. 72:05-72:07 – sustained for reasons stated in the objection
13. 73:05-73:08 – sustained, relevancy, Recovery filter
14. 76:04-76:09 – sustained, relevancy, Recovery filter
15. 78:17-78:24 – sustained, relevancy, Recovery filter
16. 79:07-79:09 – sustained, relevancy, Recovery filter
17. 79:11-79:14 – overruled, the Court will allow discussion of the Recovery
Filter brochure for comparison to the G2 Filter
18. 80:09-80:19 – overruled, the Court will allow discussion of the Recovery

Filter brochure for comparison to the G2 Filter

19. 80:22-81:12 - – overruled, the Court will allow discussion of the

Recovery Filter brochure for comparison to the G2 Filter

20. 92:21-92:24 – overruled

21. 93:10-93:12 – overruled – this email is not barred by Court Order 293

and is relevant

22. 93:19-93:21 – overruled – this email is not barred by Court Order 293

and is relevant

23. 94:06-94:11 – overruled – this email is not barred by Court Order 293

and is relevant

24. 95:09-95:12 – overruled – this email is not barred by Court Order 293

and is relevant

25. 95:19-95:22 – overruled – this email is not barred by Court Order 293

and is relevant

26. 96:15-97:04 – overruled – this email is not barred by Court Order 293

and is relevant

27. 98:12-98:17 – overruled – this email is not barred by Court Order 293

and is relevant

28. 99:19-99:21 – overruled – this email is not barred by Court Order 293

and is relevant

29. 99:24-100:01 – overruled – this email is not barred by Court Order 293
and is relevant
30. 100:05-100:07 – overruled – this email is not barred by Court Order 293
and is relevant
31. 100:09-100:09 – overruled – this email is not barred by Court Order 293
and is relevant
32. 140:04-140:09 – sustained, Rule 602
33. 140:18-140:20 – sustained, Rule 602
34. 141:05-141:13 – sustained, Rule 602
35. 141:16-142:01 – sustained, Rule 602
36. 142:15-142:20 – sustained, Rule 602
37. 142:22-142:23 – sustained, Rule 602
38. 143:07-143:17 – overruled
39. 144:1-144:15 – overruled as to 144:07-144:09 ending with “. . . to
comment on it.” Sustained as to the remainder to 144:15
40. 144:20-144:22 – sustained, non-responsive
41. 144:24-145:01 – sustained, non-responsive
42. 150:08-150:11 – sustained, Rule 602
43. 150:13 – sustained, Rule 602
44. 153:22-153:24 – sustained, Rule 602

45. 157:09-157:10 – Defendants will w/draw, previous objection sustained
46. 157:12-157:20 – Defendants will w/draw, pervious objection sustained
47. 170:05-170:08 – sustained, Rule 602
48. 170:21-171:06 – sustained, Rule 602
49. 171:07-171:14 – Defendants will w/draw, previous objection sustained
50. 179:25-180:02 – sustained, relevancy, prejudice, Recovery Filter
51. 180:04-180:05 – sustained, relevancy, prejudice, Recovery filter
52. 192:08-193:23 – sustained, relevancy, prejudice, Recovery filter
53. 194:07-194:16 – sustained, relevancy, Recovery filter
54. 197:04-197:07 – sustained, relevancy, Recovery filter
55. 197:09 – sustained, relevancy, Recovery filter
56. 198:11-198:13 – Defendants will w/draw, previous objections sustained
57. 220:20-220:21 – sustained, Rule 602
58. 221:06-221:09 – sustained, Rule 602
59. 221:14-221:15 – sustained, Rule 602
60. 221:21-222:12 – sustained, Rule 602
61. 225:25-226:05 – sustained, Rule 602
62. 226:06-226:08 – Defendants will withdraw
63. 227:05-227:08 – sustained, Rule 602
64. 227:10-227:16 – sustained, Rule 602

65. 227:17-227:18 – Defendants will withdraw
66. 228:02-228:05 – sustained, Rule 602
67. 228:07-228:10 – sustained, Rule 602
68. 228:17-228:20 – sustained, Rule 602
69. 229:02-229:07 – sustained, Rule 602
70. 229:15-229:19 – sustained, Rule 602
71. 230:02-230:13 – sustained, Rule 602
72. 230:15-230:19 – sustained, Rule 602
73. 230:21 – sustained, Rule 602
74. 230:22-230:24 – Defendants will withdraw
75. 232:12-232:15 – sustained, Rule 602
76. 232:17-232:19 – sustained, Rule 602
77. 237:24-238:07 – sustained, Rule 602
78. 239:04-239:06 – sustained, Rule 602
79. 239:08-239:12 – sustained, Rule 602
80. 239:25-240:07 – Defendants will withdraw
81. 240:25-241:03 – sustained, Rule 602
82. 241:13-241:14 – Defendants will withdraw
83. 244:25-245:04 – sustained, relevancy
84. 245:05-245:14 – sustained relevancy

- 85. 245:16-245:25 – sustained, relevancy
- 86. 246:02 – sustained, relevancy
- 87. 246:18-246:23 – sustained, relevancy
- 88. 246:25-247:05 – sustained, relevancy
- 89. 248:16-249:20 – sustained, Rule 602
- 90. 250:01-250:03 – overruled, talking about the G2 brochure
- 91. 250:05-250:11 – overruled as to 250:05-250:07; sustained for remaining,
Rule 602
- 92. 250:13-250:15 – sustained, Rule 602
- 93. 250:18-250:23 – sustained, Rule 602
- 94. 250:24-251:06 – sustained, Rule 602
- 95. 251:08-251:11 – sustained, Rule 602
- 96. 251:13-251:16 – sustained, Rule 602
- 97. 251:18-251:21 – sustained, Rule 602
- 98. 281:21-282:02 – objection sustained after 282:01 “Yes.” As non-
responsive
- 99. 300:11-300:16 – overruled
- 100. 301:06-301:13 – sustained, Rule 602
- 101. 301:24-302:03 – sustained, Rule 602 – “death” more prejudicial
than probative, Rule 403

- 102. 302:05 – sustained, Rule 602 – “death” more prejudicial
than probative, Rule 403
- 103. 321:02-321:07 – sustained, relevancy
- 104. 325:11-326:21 – overruled
- 105. 354:05-354:08 – sustained, non-responsive
- 106. 354:11-354:14 – overruled
- 107. 354:17-354:23 – overruled
- 108. 361:16-361:19 – sustained for the reasons stated in the objection

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- 109. 436:03-436:04 - – sustained, Rule 602
- 110. 443:15-444:01 – sustained, Rule 602
- 111. 448:10-448:25 – sustained, Rule 602
- 112. 450:03-450:18 – sustained, Rule 602
- 113. 457:13-458:09 – sustained, Rule 602
- 114. 458:13-459:23 – sustained, court Order No. 293, Rule 602
- 115. 461:17-462:02 – sustained, Rule 602
- 116. 462:03-462:12 – Defendants will withdraw
- 117. 463:13-463:19 – overruled
- 118. 464:18-465:15 – overruled
- 119. 465:24-466:04 – overruled

120. 466:14-466:22 – overruled
121. 466:23-467:13 – overruled
122. 467:14-468:03 – overruled
123. 484:19-484:22 – overruled
124. 498:03-498:10 – overruled
125. 522:07-522:13 – sustained, relevancy, “deaths” = prejudice
126. 524:02-524:06 – sustained, relevancy
127. 524:13-524:18 – sustained, relevancy
128. 525:05-525:13 – sustained, relevancy
129. 527:12-527:17 – overruled
130. 527:19-527:20 – overruled
131. 528:07-528:10 – overruled
132. 533:09-533:17 – overruled if Plaintiff redacts the reference to the
G2x filter
133. 535:09-536:01 – overruled

C. Natalie Wong Deposition – October 18, 2016

1. 32:17-32:22 – overruled
2. 34:20-34:24 – sustained, Rule 602, see 33:05-33:10
3. 35:06-35:20 – sustained, Rule 602, see 33:05-33:10
4. 48:11-48:20 – overruled

5. 58:05-58:19 – overruled
6. 59:02 – overruled
7. 59:05-59:07 – overruled
8. 62:25-63:07 – sustained, relevancy
9. 63:12-63:15 – sustained, relevancy
10. 66:02-66:12 – Defendants will withdraw?
11. 67:22-68:02 – sustained, relevancy
12. 68:05-68:07 – sustained, relevancy
13. 68:11-68:14 – sustained, relevancy
14. 68:25-69:01 – sustained, relevancy
15. 69:02-69:16 – Defendants will withdraw? – deaths – prejudice
16. 69:17-70:09 – sustained, relevancy – deaths – prejudice
17. 70:10-70:17 – Defendants will withdraw?
18. 70:19-71:06 – Plaintiff will withdraw? If not, sustained, relevancy
19. 71:07-71:17 – sustained, relevancy
20. 71:21-72:01 – sustained, relevancy
21. 72:06-72:12 – sustained, relevancy, prejudice
22. 72:11-73:02 – overruled
23. 73:10-73:24 – sustained, relevancy
24. 73:25-74:04 – Defendants will withdraw?

25. 74:13-74:17 – sustained, relevancy
26. 74:19-74:23 – sustained, relevancy
27. 74:25 – sustained, relevancy
28. 76:25-77:08 – sustained, relevancy
29. 77:11-77:20 – sustained, relevancy
30. 78:01-78:15 – sustained, relevancy, prejudice
31. 78:19-78:21 – sustained, relevancy
32. 78:23-78:24 – sustained, relevancy
33. 79:02-79:09 - sustained, Rule 602, non-responsive
34. 79:15-79:24 – sustained, relevancy, prejudice
35. 79:25-80:04 – sustained, relevancy
36. 80:13-80:23 – sustained, relevancy, prejudice
37. 83:01-83:04 – sustained, relevancy
38. 84:23-85:15 – sustained, Rule 602, relevancy
39. 85:21-86:13 – sustained, Rule 602, relevancy, prejudice
40. 86:15-87:15 – sustained, Rule 602, relevancy, prejudice
41. 87:22-87:23 – sustained, relevancy
42. 87:25-88:05 – sustained for reasons stated in the objection
43. 88:11 – sustained for reasons stated in the objection
44. 88:16-89:03 – sustained, relevancy, prejudice

45. 89:08-89:23 – sustained for reasons stated in the objection

46. 90:18-90:22 – sustained for reasons stated in the objection

47. 91:01-91:01 – sustained for reasons stated in the objection

48. 99:21-99:22 – sustained for reasons stated in the objection

49. 100:05-100:06 – sustained, relevancy, Rule 602

50. 100:10-100:12 – sustained, relevancy, Rule 602

51. 100:17-100:24 – sustained, relevancy, Rule 602

52. 101:12-101:19 – sustained for reasons stated in the objection

53. 105:12-106:08 – sustained for reasons stated in the objection

54. 106:11-106:14 – sustained for reasons stated in the objection

55. 106:23-107:02 – overruled, provided Plaintiff redacts “or death” as

that is not relevant, and prejudice exceeds probative value. The Court is allowing testimony regarding the IFU for both the Recovery filter and G2 filter. There is a question about foundation here as to the witness’s knowledge regarding the Recovery IFU but the Court will allow this testimony.

56. 109:24-110:13 – sustained – this Exhibit is dated June 20, 2006,

which is after the G2 filter came on the market. Evidence of problems with the Recovery filter that came to light after the G2 filter went on the market is not relevant.

- 57. 110:18-111:25 – sustained – see 56.
- 58. 112:13-112:22 – sustained, see 56
- 59. 114:14-114:16 – sustained, see 56
- 60. 115:12-115:15 – sustained, see 56
- 61. 116:02-116:11 – sustained, see 56
- 62. 116:12 – sustained – no foundation that this witness knew what was or wasn't conveyed to physicians by the sales force
- 63. 116:23-117:06 – sustained – see 56 above
- 64. 117:24-120:12 – sustained, relevance, prejudice, confusion, 119:22-120:12, witness doesn't know the answer to these questions and questions are not evidence, warnings provided for the Recovery filter are not relevant
- 65. 120:14-120:20 – sustained – see 64
- 66. 120:22 – sustained – see 64
- 67. 121:15-121:24 – sustained, warnings provided for the Recovery filter are not relevant
- 68. 122:09-122:22 – sustained – this exhibit is dated August 4, 2006, three weeks before the G2 filter was implanted into the Plaintiff. See 56
- 69. 129:01-129:09 – sustained, relevancy

- 70. 129:10-129:13 – sustained, relevancy
- 71. 129:25-130:12 – sustained, relevancy
- 72. 130:17-130:18 – sustained, relevancy
- 73. 130:21-130:22 – sustained, relevancy
- 74. 130:24-131:02 – sustained, relevancy
- 75. 131:07-131:12 – sustained, relevancy
- 76. 131:13-131:18 – sustained, relevancy
- 77. 131:19-131:22 – sustained, relevancy
- 78. 131:23-132:3 – sustained, relevancy
- 79. 132:12-132:18 – sustained, relevancy
- 80. 132:20 – sustained, relevancy
- 81. 135:03-135:13 – sustained – no idea which filter is being discussed;
sustained for reasons stated in the objection
- 82. 135:18-136:13 – sustained for reasons stated in the objection
- 83. 136:15 – sustained for reasons stated in the objection
- 84. 138:12-138:22 – sustained for reasons stated in the objection
- 85. 140:05-140:10 – Defendants should withdraw counter
- 86. 140:11-140:16 – Plaintiff should withdraw counter to counters
- 87. 146:25-147:09 – overruled
- 88. 147:13-147:16 – overruled

- 89. 156:10-156:14 – sustained for reasons stated in the objection
- 90. 156:16-157:03 – sustained for reasons stated in the objection
- 91. 157:16-157:21 – sustained, non-responsive
- 92. 159:18-159:21 – overruled as to 159:18 because it is the answer to the question immediately preceding, to which Defendants did not object – sustained as to remainder, relevancy
- 93. 159:23-159:24 – sustained for reasons stated in the objection
- 94. 163:15-163:18 – sustained, relevancy
- 95. 164:09-164:13 – overruled
- 96. 164:19-164:23 – sustained, Rule 602, question is not evidence
- 97. 166:18-166:21 – sustained for reasons stated in the objection
- 98. 166:23 – sustained for reasons stated in the objection
- 99. 176:12-177:14 – overruled – answer to a question to which Defendants did not object
- 100. 178:10-178:25 – sustained for reasons stated in the objection
- 101. 179:02-179:22 – sustained for reasons stated in the objection
- 102. 180:10-180:18 – sustained, confusing, not sure which filter is being discussed – G2 or Meridian?
- 103. 180:20-181:01– sustained for reasons stated in the objection
- 104. 181:03 – sustained for reasons stated in the objection

- 105. 201:05-201:15 – overruled – Plaintiff opened the door to a discussion of the SIR guidelines, 200:10-200:13
- 106. 203:20-203:25 – overruled
- 107. 219:17-220:03 – sustained as to 219:21-220:03 for reasons stated in the objection
- 108. 220:06-220:10 – sustained for the reasons stated in the objection
- 109. 231:04-231:18 – sustained, relevancy, prejudice, fatalities
- 110. 232:19-233:12 – sustained, relevancy
- 111. 233:13-234:06 – sustained
- 112. 234:07-234:11 – overruled
- 113. 234:13 – overruled
- 114. 234:15-234:21 – sustained, relevance, fatalities caused by Recovery filter, prejudice
- 115. 234:22-234:24 – Plaintiff should withdraw – see 114
- 116. 235:10 – Plaintiff should withdraw – see 114
- 117. 249:13-250:09 – sustained, relevance, fatalities with the Recovery filter, prejudice
- 118. 251:24-252:09 – sustained, relevance, fatalities with the Recovery filter, prejudice
- 119. 252:13-254:05 – sustained, relevance, fatalities with the Recovery

filter, prejudice

120. 254:21-255:14 – overruled

121. 257:02-257:17 – sustained, relevance, fatalities with the Recovery

filter, prejudice

122. 258:18-258:25 – overruled

123. 259:01-259:12 – sustained, relevance, fatalities with the Recovery

filter, prejudice

124. 264:22-265:21 – sustained, relevance, fatalities with the Recovery

filter, prejudice

125. 279:02-279:22 – sustained for reasons stated in the objection

126. 279:24 – sustained for reasons stated in the objection

127. 280:19-280:23 – sustained for reasons stated in the objection

128. 280:25-281:03 – sustained for reasons stated in the objection

129. 281:05 – sustained for reasons stated in the objection

130. 287:20-288:12 – overruled

131. 288:15-289:03 – overruled

132. 289:16-289:20 – sustained, cumulative, see 289:4-289:12

133. 289:21-290:14 – overruled as to 289:21-290:10 ending with “heart”

and not mentioning fatality; and 289:12 ending with “heart”.

134. 290:20-290:23 – sustained, relevance, fatalities with the Recovery


filter, prejudice

135. 290:24-291:04 – sustained, cumulative

136. 291:06 – sustained, cumulative

The clerk is directed to notify counsel of the entry of this Order.

DATED this 23rd day of February, 2023.


SUSAN P. WATTERS
United States District Judge